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JUL 05 2007

OFFICE OF PETITIONS

In re Application of :
Pierpaolo Correale, et al. :
Application No. 10/691,125 :
Filed: October 21, 2003 :
Attorney Docket No. 126442-100008-US :
:

ON PETITION

This is a decision in response to the petition, filed February 26, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b). This is also a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Rebekka C. Noll appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party on whose behalf she acts. A courtesy copy of this decision is being mailed to petitioner. However, if Ms. Noll desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record.

As to the petition under 37 CFR 1.137(b) --

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed January 3, 2006. A Notice of Abandonment was mailed on August 10, 2006. On February 26, 2007, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of \$1,500; and (3) an adequate statement of unintentional delay¹.

Accordingly, the petition under 37 CFR 1.137(b) is **GRANTED**.

As to the request under 37 CFR 1.28 --

On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity.

¹ 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

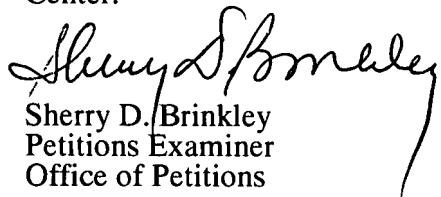
Your fee deficiency submission under 37 CFR 1.28 for the above-identified application is hereby **ACCEPTED.**

This application no longer qualifies for small entity status. Accordingly, any future fees must be paid at the large entity rate.

It is noted that fees under 1.28 are authorized to be charged in the related provisional application. Since each file must be complete in itself, the balance of the fees for the related provisional application cannot be charged at this time. A separate copy of the request must be furnished for each file to which the paper pertains, even though the contents of the papers filed in two or more files may be identical, in accordance with 37 CFR 1.1.4(b).

The application is being referred to Technology Center AU 1653 for consideration of the amendment filed February 26, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: REBEKKA C. NOLL
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